

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA0674
)	HUD NO.: 21BA83048
SYLVESTER O. MBA)	ALS NO.: 09-0612
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin, upon Sylvester O. Mba's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Counts A, B and C of Charge No. 2009CA0674²; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of Counts A, B, and C of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 9, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in his charge that his former employer, the Chicago Transit Authority, ("Employer"), failed to promote him in July 2008 because of his race, Black (Count A), sex, male (Count B), and national origin, Nigeria (Count C); and laid him off September 8, 2008, because of his race (Count D), age, 53 (count E), and national origin (Count F), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 24, 2009, the Respondent dismissed Counts A, B, and C of the Petitioner's charge for Lack of Substantial Evidence and made a finding of Substantial Evidence as to Counts D, E, and F. On October 28, 2009, the Petitioner filed a timely Request as to Counts A, B and C.
2. The Petitioner began his employment with the Employer in November 1999 as a Coordinator of Labor Economics. In April 2008, the Petitioner applied for a management position in the Employer's Law Department Administration. The primary duties of the position were to prepare

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

² The Respondent entered a finding of substantial evidence as to Counts D, E, and F of the charge on September 24, 2009. Therefore those Counts are not before the Commission on this Request.

budgets and monitor expenses; oversee vendor invoice processing; manage the Department's automated billing system; train employees on the use of the automated billing system, and ensure that the Department's expenses stayed within budget. The listed qualifications for the position included a requirement that the candidate have a bachelor's degree in a related field, including business administration, computer science, and/or a combination of experience and education; a minimum of three (3) years of experience supervising staff; and a minimum of three (3) years providing budget and/or cost accounting support.

3. The Petitioner was one of four candidates who applied and interviewed for the position.
4. At the time of his application, the Petitioner had less than nine years experience with the Employer. The Petitioner did have strong financial experience, and he held a Masters degree in business administration. In his position as Coordinator of Labor Economics, the Petitioner's duties were to prepare the budget and order supplies for the Employer's Employee Relations department, which consisted of 17 employees. Prior to working for the Employer, the Petitioner had worked for five years in a supervisory position with the Chicago Housing Authority, where he had supervised five employees.
5. In July 2008, after holding a round of interviews, the Employer selected a white female who was not of Nigerian origin for the management position in the Law Department Administration. Just prior to July 2008, the selected candidate oversaw a \$ 14,000,000.00 budget, supervised 160 employees, and engaged in budget preparation for the Employer in a different department.
6. Further, the selected candidate's resumé provided that she had a total of 22 years of managerial and supervisory experience. From 1976-1982, the selected candidate had supervised a staff of 15 in the department of a Chicago hospital. The selected candidate began working for the Employer in 1983, thus as of July 2008 the selected candidate had worked for the Employer for 25 years. Sixteen of those twenty-five years were spent in managerial or supervisory positions in various departments, and her duties often included coordinating and overseeing the preparation of budgets. Although the selected candidate had attended the University of Illinois for four years, she did not earn a degree. The selected candidate had a paralegal certificate.
7. In Counts A-C, the Petitioner alleged the Employer failed to promote him because of his race (Black), his sex (male), and his national origin (Nigeria). In his Request the Petitioner argues the selected candidate was less qualified than he was for the position. The Petitioner attaches to his Request a copy of the selected candidate's resume as proof of the selected candidate's alleged lesser qualifications. The Petitioner also argues that one of the Employer's witnesses lied to the Respondent's investigator about the selected candidate's qualifications.

8. In its Response, the Respondent asks the Commission to sustain its dismissal of Counts A, B, and C of the Petitioner's charge. The Employer stated that it chose the selected candidate because she had the most managerial experience and thus was the most qualified person for the position. The Respondent argues there is no evidence the Employer's stated non-discriminatory reason for its decision was a pretext for discrimination. The Respondent found no evidence that the selected candidate's qualifications were so inferior to the Petitioner's qualifications that no reasonable person would have chosen the selected candidate over the Petitioner.

CONCLUSION

The Commission concludes that the Respondent properly dismissed Counts A, B, and C of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

Once a Petitioner has established a *prima facie* case of discrimination, the burden shifts to the Employer to articulate a non-discriminatory reason for its action. The Commission then examines whether the Petitioner has demonstrated that the Employer's stated reason was a pretext for discrimination. In this case, the Commission finds no such evidence of pretext.

The Petitioner bases his claim primarily on his belief that he was more qualified than the selected candidate. "Qualification evidence" may demonstrate pretext, see Cooper v. Southern Co., 390 F.3d 695, 732 (11th Cir. 2004) if it appears... "that the credentials of the successful candidate were so inferior to those of the complainant that the statement by the respondent that it selected the person with the better credentials could be considered unworthy of credence." See Bolte and State of Illinois, Department of Transportation, 55 Ill.HRC.Rep. 3, 5 (1990), citing Kindred v. Illinois Human Rights Commission, 180 Ill.App.3d 766, 536 N.E.2d 447 (3rd Dist. 1989).

In the Petitioner's case, there is no substantial evidence that the Employer's stated reason for choosing the selected candidate over the Petitioner was not worthy of credence. Based on the selected candidate's resumé, which the Petitioner himself put before the Commission for its consideration, the selected candidate had significantly more managerial experience than the Petitioner. The selected candidate also had more experience working for the Employer. Finally, the selected candidate was experienced in managing substantial budgets for the Employer.

While it is true the Petitioner had attained a higher educational level than the selected candidate, the Employer stated that it also considered a combination of education and relevant work experience sufficient to render an applicant qualified for the managerial position in the Law Department Administration. The Petitioner had a total of 22 years of managerial and supervisory

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Page 4 of 4

In the Matter of the Request for Review by: Sylvester O. Mba

experience, compared with the Petitioner's 5 years of supervisory experience. Based on this evidence, the Commission finds no substantial evidence that the Employer's stated reason for choosing the selected candidate over the Petitioner was a mere pretext for race, sex, or national origin discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This Order is not Yet Final and Appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 12th day of May 2010.

Commissioner Munir Muhammad

Commissioner Diane Viverito

Commissioner Nabi Fakroddin